multiplier for the appellant who had 28 years before she reached the age of 55. In the present appeal, we think that 14 years would be the suitable multiplier. This would be consistent with the period taken in *Low Kok Tong* v. *Teo Chan Pan*[4] and the *McGuinness* case (*supra*). So, we apply the multiplier 14 to the multiplicand of $600 to arrive at the sum of $100,800.

Finally, the defendants appealed on the award of $10,000 for the costs of the future renewal of the artificial leg. Objections were raised that it was not claimed in the statement of claim, that there was no evidence that the artificial leg would have to be changed periodically and as to the costs for replacement and repairs. The short answer is that there is the averment in the statement of claim that by reason of the negligence of the defendants the plaintiff claims damages. Under this general claim counsel for the plaintiff was entitled, which he did at the close of the case in his submission on damages, to make a claim for such costs. As for quantum, he relied on the *McGuinness case* (*supra*). Roberts C. J. in that case gave the plaintiff a reasonable sum for the cost of replacement of his artificial limb in future years and for necessary repairs to it from time to time. In that case the plaintiff did produce two letters from the Deputy Commissioner of the Department of Veterans' Affairs, Brisbane, Australia which referred to replacement, repairs, and the costs thereof. The learned Chief Justice however increased the sum to make allowance for stump socks and other expenses such as travel and subsistence, involved in visits for repairs. He awarded B$18,144.

We are of the opinion that a Judge can take judicial notice that an artificial leg would have to be repaired and replaced from time to time. As for the quantum, the learned Judge was guided by the decision in Brunei. He came to the conclusion that a reasonable sum for the costs of future renewal was $10,000. We agree with him.

For the reasons we have given, the appeal of the defendants is dismissed. The cross-appeal is allowed. We increase the special damages for loss of earnings to $38,000 and the future loss of earnings to $100,800. There will be costs to the plaintiff on the appeal and cross-appeal.

Appeal dismissed;
Cross-appeal allowed.

Solicitors : *Godwin & Co.; Murphy & Dunbar.*

PETER GOMEZ v. BRENTNALL BEARD & CO. (S) PTE. LTD.

[O.C.J. (Rajah J.), March 21, 1985]

[Singapore – Suit No. 556 of 1977]

Contract – Insurance agent and brokers – Commissions on insurance premiums collected – Confirmation letter in dispute – "Remuneration" – Interpretation – Frustration.

Insurance – Insurance agent and brokers – "Remuneration" – Commission on premiums.

In this case, the plaintiff, an insurance agent, claimed against the defendants, insurance brokers, a 5% commission of the total insurance premiums collected by them from the Bangladesh Shipping Corporation ("BSC"). Sometime in 1973 the plaintiff met his client one Suresh who informed him that BSC was looking for a suitable and reliable insurance company to insure its vessels, which were under some form of financing by a bank. Through the introduction of the plaintiff and Suresh, the defendants became acquainted with the bank, which appointed the defendants as insurance brokers regarding insurance on ships owned by BSC and financed by the bank. Following these arrangements, Baxter, the defendants' managing director, wrote a letter dated December 19, 1973 to Suresh summarising the commissions payable to Suresh (10%) and the plaintiff (5%). This letter was the basis of the plaintiff's claim and was disputed by the defendants, who contended that he was not entitled to the commission. Two issues came before the court: (1) the interpretation of the letter (AB3) signed by Baxter and (2) whether the commission contract had been frustrated. The defendants argued that the matter turned on the word "remuneration".

Held: (1) it is a rule of construction, unless otherwise indicated in the document, that the word "remuneration" should be given the same meaning throughout the whole document. The word means what is earned based on a percentage of the premiums collected. Therefore what document AB3 says is that 10% remuneration or 10% brokerage is to be paid to Suresh, 5% brokerage to the defendant company and 5% brokerage to the plaintiff, and each of the 3 parties is entitled to the said percentage;

(2) the plaintiff's claim is simply one based on the premiums collected. It is common ground that the defendants did collect premiums on insurance and re-insurance concerned. In the circumstances, judgment must be given for the plaintiff in the sum of US$24,290.32 with interest at 10% from date of issue of writ to date of judgment on March 21, 1985 and with costs.

CIVIL SUIT.

Prabhakaran Nair for the plaintiff.
Chia Quee Khee for the defendant.

Cur. Adv. Vult.

Rajah J. : At the outset of this trial both counsel had agreed on a statement of facts and what they thought in their view were the issues in this

case. I therefore propose to use this statement of facts as a part of my judgment.

The Plaintiff is an insurance agent and the defendant carries on the business of insurance of insurance brokers. Sometime in 1973 the Plaintiff met his client Mr. Suresh Mahawar (Suresh) of Makhanlall & Co. Pte. Ltd. of Malacca Street, Singapore, who informed him that the Bangladesh Shipping Corporation (hereinafter referred to as BSC) was looking for a suitable and reliable insurance company in Singapore to insure its vessels. At that time the Plaintiff had an office within the premises of the Defendant company. The vessels were at that time the subject of some form of financing to be given by the Moscow Narodny Bank (hereinafter referred to as MNB), Singapore Branch, to the BSC, and through the introduction of Suresh and the Plaintiff, the Defendant became acquainted with the MNB, who by a letter of December 26, 1973 appointed the Defendant as insurance brokers for the placement, arrangement and servicing in all respects of insurance on ships owned by the BSC and financed by MNB.

To confirm the arrangements, the Defendant's Managing Director, Mr. Don Baxter (Baxter) wrote a letter dated December 19, 1973 to Suresh (AB3) summarising the commissions payable to both Suresh and the Plaintiff. It is this letter that will form the basis of the Plaintiff's claim as well as the bone of contention between the Plaintiff and the Defendant.

The amount of the premiums collected is not being disputed as the figures given by the Plaintiff in his statement of claim were all obtained from the Defendant's accounts. The amount of commission claimed is however in issue.

Very briefly, it is the Plaintiff's contention that the letter signed by Baxter clearly entitles him to a 5% commission of the total premium collected by the Defendant from the BSC irrespective of the type of insurance for which the premium was collected.

The Defendant's contention however is that the Plaintiff is not entitled to this commission because

(a) the effect of the commission letter is that the Plaintiff was to be entitled to a commission of 5% of the commission earned by the Defendant and not 5% of the premium;

(b) the commission letter was based on the Defendant effecting, or expecting to effect, the insurance of the BSC vessels –

  (i) as insurance brokers and not reinsurance brokers;

  (ii) as insurance brokers for Hull & Machinery, Increased Value and War Risks insurances, but no Protection and Indemnity insurances;

(c) there was frustration of the Defendant's contract as insurance brokers as aforesaid in that the Sadharan Bima Corporation (SBC), a Bangladesh insurance company, intervened to become the insurer of the BSC vessels, and this resulted in the Defendant being excluded as insurance brokers as envisaged. The Defendant thereafter, through the efforts of Baxter, managed to obtain some business of effecting the re-insurance of the BSC's vessels as re-insurance brokers, but not as insurance brokers and the commission earned by the Defendant in this respect was not, and could not be, the subject of the commission letter; therefore, the plaintiff has no right in this commission.

The issue before the Court is therefore the interpretation of this letter signed by Baxter. Related to this is the other issue whether the commission contract has been frustrated. It is the Plaintiff's contention that no such frustration has taken place as he is only claiming on the actual business already concluded. The Defendant however says that the commission letter envisaged the Defendant acting as insurance brokers of the BSC vessels, and secondly for the Hull & Machinery, Increased Value & War Risks insurances and as all these did not subsequently materialise, the basis on which the Plaintiff was to be paid the said commission was gone and the Plaintiff is not entitled to any commission at all.

In his final submission to the Court after the evidence had been taken Mr. Chia for the Defendant narrowed the issues even further and said: "The issue before the Court although narrow, is not simple. Matter turns on the word "remuneration'. The word remuneration must mean what one is paid for the job done. 5% remuneration can only mean 5% of what the Defendant earns. Therefore 5% of the remuneration must mean 5% of the brokerage Defendant earned on the deal. It cannot mean 5% of the premium." He went on further to say that in the particular circumstances

of this case nothing was payable as the business envisaged did not materialise and that the business that was done was not what was envisaged.

Now with regard to his submission that the issue before the Court though narrow is not a simple one and that everything turns on the question of what interpretation is to be given to the word 'remuneration' in document AB3. If one looks at AB3 it will be seen that it is in three paragraphs. It says:

"With reference to Bangladesh Shipping Corporation, I wish to confirm our discussions relating to the above account as follows:

1. Brentnall Beard & Co. (S) Pte. Ltd, will retain 5% brokerage to their account. 5% of the remuneration will be paid to Mr. P. Gomes. The balance of 10% and/or any additional will be paid to your account.
2. This remuneration will be payable during the period that the business remains with our company.
3. We will share in the same proportions as stated in (1) above, any remuneration or any additional business we obtain from the abovenamed Corporation as a result of your introduction."

This document AB3 was addressed to Suresh and copied to the Plaintiff. It would be noted that the word remuneration appears in all 3 paragraphs. It is conceded by the Defendant that under the document the Defendant and Suresh get 5% and 10% respectively of the premiums collected.

It is a rule of construction, unless otherwise indicated in the document, that the word remuneration should be given the same meaning throughout the whole document. A reading such as advocated by the Defendant counsel would make nonsense of this document and would be in conflict with Suresh getting 10% commission on the premiums collected. The only way one can make sense is to read the word remuneration to mean what one earns or is paid for work done. This would very much depend on the manner in which the remuneration is to be effected in the trade. When one talks of brokerage in the insurance world one talks about a percentage on the premiums collected. When one talks of brokerage in a land deal one talks about a percentage on the sale price. In this document I must read remuneration to mean what the Plaintiff's Counsel says it means. Remuneration means what is earned based on a percentage of the premiums collected. Therefore, in my view, what document AB3 says is that 10% remuneration or 10% brokerage is to be paid to Suresh, 5% brokerage to the Defendant company and 5% brokerage to the Plaintiff. It is suggested that this kind of construction will give to the Plaintiff something quite out of proportion to the effort he has put in in this contract. I do not think it is for me to say who put in the greater effort. I can only determine the rights of the parties on the contract before me and if the parties agree that the Plaintiff should get 5%, for his introduction, that in my view is sufficient consideration. It is not for the Court to say because you did so little therefore you cannot get as much as the defendant who did much more. The defendant company are insurance brokers. It is run by hard-headed and experienced businessmen. They know exactly what they are doing. They know the value of an introduction when a customer is brought to them and it is priced accordingly. Therefore I hold that what document AB3 means is that each one of the 3 parties would get the percentages set out in the document itself, that is, the Plaintiff would get 5% of the premium collected, Suresh on behalf of the company would get 10% of the premium collected and the defendant company would get 5% of the premium collected.

I accept the evidence of the Plaintiff when he says, and this is not disputed by the Defendant, that in these circumstances it is possible for the broker company to load the premium and it could well be that the premiums collected here on the insurances were loaded although I have no evidence before me of the actual premiums collected in these insurances.

The only other point I have to dispose of is that of the Defendant's contention that because of the intervention of the Bangladesh insurance company, the Defendant company were frustrated in their contract and are therefore free from liability to the Plaintiff.

The Plaintiff's claim is a fairly simple one. It is common ground that the Defendants did collect premium on insurance or reinsurances effected by them. AB3 read with MNB's letter December 26, 1973 to the Defendant (AB4) covers all such premiums both in regard to insurance and reinsurances. His claim is simply one based on the premiums actually collected by the Defendant. The Plaintiff does not contend that the Defendant should have collected so much more premium than they actually did. It is a straightforward claim. In the circumstances I must give judgment for the Plaintiff.

There will therefore be judgment for the Plaintiff in the sum of US$24,290.32 and there will be interest payable at 10% on the said sum from date of issue of Writ to date of Judgment *i.e.* today, March 21, 1985. Costs of the proceedings to the Plaintiff.

Claim allowed.

Solicitors : *Karan Nair & Co.; Wee Swee Teow & Co.*

MALAYSIAN REPORTS

LAM KONG CO. LTD. v. THONG GUAN CO. (PTE.) LTD.

[S.C. (Abdul Hamid C.J. (Malaya), Wan Suleiman & Seah S.C.JJ.)
March 12 & May 19, 1985]

[Johor Bahru – Federal Court Civil Appeal No. 186 of 1984]

Practice and Procedure – Claim for specific performance – Non-appearance of defendant – Whether judgment in default can be entered – R.S.C. 1957, O.13 r. 12, O. 14A & O. 70.

The respondent in this case had brought an action for specific performance of a contract for the sale of land against the appellant. The writ was served outside jurisdiction and as the appellants did not appear to the writ judgment in default was entered by the Senior Assistant Registrar. The appellants applied to set aside the judgment in default. The application was dismissed in the High Court and the appellants appealed.

Held: (1) in the light of Order 13 rule 12 of the Rules of the Supreme Court, 1957, it seems clear that if the writ is specially indorsed, as in this case, then the plaintiffs are to proceed with the action as if the defendants had appeared. The respondents in this case are therefore precluded from entering default judgment against the appellants;

(2) the breach and the non-compliance with the rules in this case were not mere irregularities but fundamental defects. The fundamental defect was not curable as the effect of the breach and non-compliance was to defeat the right of the other party to the action;

(3) there was no unreasonable delay by the appellants in this case, as they took steps to apply to set aside the judgment in default as soon as they became aware of it;

(4) although the order had been perfected in this case and the land had been transferred to the respondents and registered the court was not precluded from exercising its inherent power to set aside the default judgment if it decided that the respondents were disentitled to the order.

Case referred to :

(1) *Re Harrison's Share under a Settlement* [1954] 2 All E.R. 453.

SUPREME COURT.

Upali Masacorale (*Lim Cheun Ren* with him) for the appellant.

Gan Kim Sing for the respondents.

Cur. Adv. Vult.

Abdul Hamid C.J. (Malaya) (delivering the Judgment of the Court): This is an appeal against